

111TH CONGRESS
2D SESSION

H. R. 5628

To end the use of corporal punishment in schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2010

Mrs. MCCARTHY of New York (for herself, Mr. HARE, Mr. SCOTT of Virginia, Mr. HOLT, Mr. POLIS of Colorado, Ms. WOOLSEY, Mr. GRIJALVA, Ms. SHEA-PORTER, Mr. KUCINICH, Mr. PAYNE, Mr. ANDREWS, Mr. HINOJOSA, Mrs. DAVIS of California, Ms. HIRONO, Mr. PASCRELL, Mr. CAPUANO, Mr. MURPHY of Connecticut, and Mr. SESTAK) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To end the use of corporal punishment in schools, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the Ending Corporal Pun-
5 ishment in Schools Act.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Behavioral interventions for children must
2 promote the right of all children to be treated with
3 dignity. All children have the right to be free from
4 any corporal punishment.

5 (2) Safe, effective, evidence-based strategies are
6 available to support children who display challenging
7 behaviors in school settings.

8 (3) School personnel have the right to work in
9 a safe environment and should be provided training
10 and support to prevent injury and trauma to them-
11 selves and others.

12 (4) According to the Department of Education's
13 Technical Assistance Center on School-Wide Positive
14 Behavior Interventions and Support, outcomes asso-
15 ciated with school-wide positive behavior support are
16 decreased office discipline referrals, increased in-
17 structional time, decreased administrator time spent
18 on discipline issues, efficient and effective use of
19 scarce resources, and increased perception of school
20 safety and sustainability through a team approach.

21 (5) Twenty States continue to permit corporal
22 punishment in public schools.

23 (6) According to Department of Education sta-
24 tistics, each year in the United States, hundreds of
25 thousands of school children are subjected to cor-

1 corporal punishment in public schools. School corporal
2 punishment is usually executed in the form of “pad-
3 dling”, or striking students with a wooden paddle on
4 their buttocks or legs, which can result in abrasions,
5 bruising, severe muscle injury, hematomas, whiplash
6 damage, life-threatening hemorrhages, and other
7 medical complications that may require hospitaliza-
8 tion.

9 (7) Gross racial disparity exists in the execution
10 of corporal punishment of public schoolchildren, and
11 Black schoolchildren are disproportionately cor-
12 porally punished. The most recent available statistics
13 show that African-American students make up 17.1
14 percent of the national student population, but 35.6
15 percent of all students subjected to physical punish-
16 ment at school.

17 (8) Public schoolchildren with disabilities are
18 subjected to corporal punishment at disproportion-
19 ately high rates, approximately twice the rate of the
20 general student population in some States.

21 (9) Corporal punishment is used in many in-
22 stances for minor disciplinary infractions, such as
23 being tardy or violating the dress code.

24 (10) Corporal punishment has resulted in phys-
25 ical injury and psychological trauma to children in

1 public and private schools. Social skills development
2 after the use of corporal punishment may be severely
3 altered, leading to aggressive behaviors. National re-
4 search shows students have been subjected to cor-
5 poral punishment in schools as a means of discipline,
6 to force compliance, or as a substitute for appro-
7 priate educational support.

8 (11) Children are protected from corporal pun-
9 ishment in other settings, such as hospitals, health
10 facilities, Head Start programs, and nonmedical
11 community-based facilities. Similar protections are
12 needed in schools.

13 (12) Prisoners in Federal prison are protected
14 from corporal punishment.

15 **SEC. 3. PURPOSES.**

16 The purposes of this Act are to—

17 (1) eliminate the use of corporal punishment in
18 schools;

19 (2) ensure the safety of all students and school
20 personnel in schools and promote a positive school
21 culture and climate;

22 (3) assist States, local educational agencies,
23 and schools in identifying and implementing effective
24 evidence-based models to prevent and reduce—

25 (A) corporal punishment in schools;

1 (B) aversive behavior interventions that
2 compromise health and safety; and

3 (C) physical, emotional, or psychological
4 abuse.

5 **SEC. 4. PROHIBITION AGAINST CORPORAL PUNISHMENT.**

6 Subpart 4 of part C of the General Education Provi-
7 sions Act (20 U.S.C. 1232f et seq.) is amended by adding
8 at the end the following:

9 **“SEC. 448. PROHIBITION AGAINST CORPORAL PUNISH-**
10 **MENT.**

11 “(a) GENERAL PROHIBITION.—No funds shall be
12 made available under any applicable program to any edu-
13 cational agency or institution, including a local edu-
14 cational agency or State educational agency, that has a
15 policy or practice which allows school personnel to inflict
16 corporal punishment upon a student—

17 “(1) as a form of punishment; or

18 “(2) for the purpose of modifying undesirable
19 behavior.

20 “(b) LOCAL EDUCATIONAL AGENCY.—

21 “(1) IN GENERAL.—In the case of an applicable
22 program under which a local educational agency may
23 only receive funds through a State educational agen-
24 cy that is prohibited under subsection (a) from re-
25 ceiving funds under any applicable program, a local

1 educational agency that is not prohibited under sub-
2 section (a) from receiving such funds may apply di-
3 rectly to the Secretary to receive funds under the
4 program.

5 “(2) CERTIFICATION.—Each local educational
6 agency applying directly to the Secretary under
7 paragraph (1) shall certify in such application that
8 the agency is not prohibited under subsection (a)
9 from receiving funds under any applicable program.

10 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion shall be construed to preclude school personnel from
12 using, within the scope of employment, reasonable re-
13 straint to the lightest possible degree upon a student, if—

14 “(1) the student’s behavior poses an imminent
15 danger of physical injury to the student, school per-
16 sonnel, or others;

17 “(2) less restrictive interventions would be inef-
18 fective in stopping such imminent danger of physical
19 injury; and

20 “(3) the reasonable restraint ends immediately
21 upon the cessation of the conditions described in
22 paragraphs (1) and (2).

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘corporal punishment’ means pad-
2 dling, spanking, or other forms of physical punish-
3 ment, however light, imposed upon a student;

4 “(2) the term ‘educational agency or institution’
5 means any public or private agency or institution
6 which is the recipient, or serves students who are re-
7 cipients of, funds under any applicable program;

8 “(3) the terms ‘local educational agency’ and
9 ‘State educational agency’ have the meanings given
10 such terms in section 9101 of the Elementary and
11 Secondary Education Act of 1965;

12 “(4) the term ‘school personnel’ has the mean-
13 ing—

14 “(A) given the term in section 4151(10) of
15 the Elementary and Secondary Education Act
16 of 1965 (20 U.S.C. 7161(10)); and

17 “(B) given the term ‘school resource offi-
18 cer’ in section 4151(11) of the Elementary and
19 Secondary Education Act of 1965 (20 U.S.C.
20 7161(11)); and

21 “(5) the term ‘student’ includes any person who
22 is in attendance at an educational agency or institu-
23 tion.”.

1 **SEC. 5. STATE PLAN AND ENFORCEMENT.**

2 (a) STATE PLAN.—Not later than 18 months after
3 the date of enactment of this Act and every third year
4 thereafter, each State educational agency shall submit to
5 the Secretary a State plan that provides—

6 (1) assurances to the Secretary that the State
7 has in effect policies and procedures that eliminate
8 the use of corporal punishment in schools;

9 (2) a description of the State’s policies and pro-
10 cedures; and

11 (3) a description of the State plans to ensure
12 school personnel and parents, including private
13 school personnel and parents, are aware of the
14 State’s policies and procedures.

15 (b) ENFORCEMENT.—

16 (1) IN GENERAL.—

17 (A) USE OF REMEDIES.—If a State edu-
18 cational agency fails to comply with subsection
19 (a), the Secretary shall—

20 (i) withhold, in whole or in part, fur-
21 ther payments under an applicable pro-
22 gram (as such term is defined in section
23 400(c) of the General Education Provi-
24 sions Act (20 U.S.C. 1221)) in accordance
25 with section 455 of such Act (20 U.S.C.
26 1234d);

(ii) enter into a compliance agreement in accordance with section 457 of the General Education Provisions Act (20 U.S.C. 1234f); or

(iii) issue a complaint to compel compliance of the State educational agency through a cease and desist order, in the same manner the Secretary is authorized to take such action under section 456 of the General Education Provisions Act (20 U.S.C. 1234e).

(B) CESSATION OF WITHHOLDING OF FUNDS.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State educational agency who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments with respect to the State educational agency under such subparagraph.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority under the General Education Provisions Act (20 U.S.C. 1221 et seq.).

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to preclude school personnel from
3 using, within the scope of employment, reasonable re-
4 straint to the lightest possible degree upon a student, if—

5 (1) the student’s behavior poses an imminent
6 danger of physical injury to the student, school per-
7 sonnel, or others;

8 (2) less restrictive interventions would be ineef-
9 fective in stopping such imminent danger of physical
10 injury; and

11 (3) the reasonable restraint ends immediately
12 upon the cessation of the conditions described in
13 paragraphs (1) and (2).

14 **SEC. 6. GRANT AUTHORITY.**

15 (a) IN GENERAL.—From the amount appropriated
16 under section 11, the Secretary may award grants to State
17 educational agencies to assist the agencies in improving
18 school climate and culture by implementing school-wide
19 positive behavior support approaches.

20 (b) DURATION OF GRANT.—A grant under this sec-
21 tion shall be awarded to a State educational agency for
22 a 3-year period.

23 (c) APPLICATION.—Each State educational agency
24 desiring a grant under this section shall submit an appli-
25 cation to the Secretary at such time, in such manner, and

1 accompanied by such information as the Secretary may
2 require, including information on how the State edu-
3 cational agency—

4 (1) will develop State training programs on
5 school wide-positive behavior support approaches,
6 such as training programs developed with the assist-
7 ance of the Secretary (acting through the Office of
8 Special Education Programs Technical Assistance
9 Center on Positive Behavioral Interventions and
10 Supports of the Department of Education); and

11 (2) will target resources to schools and local
12 educational agencies in need of assistance related to
13 improving school culture and climate through posi-
14 tive behavior supports.

15 (d) AUTHORITY TO MAKE SUBGRANTS.—

16 (1) IN GENERAL.—A State educational agency
17 receiving a grant under this section may use such
18 grant funds to award subgrants, on a competitive
19 basis, to local educational agencies.

20 (2) APPLICATION.—A local educational agency
21 desiring to receive a subgrant under this section
22 shall submit an application to the applicable State
23 educational agency at such time, in such manner,
24 and containing such information as the State edu-
25 cational agency may require.

1 (e) PRIVATE SCHOOL PARTICIPATION.—

2 (1) IN GENERAL.—A local educational agency
3 receiving subgrant funds under this section shall,
4 after timely and meaningful consultation with appro-
5 priate private school officials, ensure that private
6 school personnel can participate, on an equitable
7 basis, in activities supported by funds under this
8 section.

9 (2) PUBLIC CONTROL OF FUNDS.—The control
10 of funds provided under this section, and title to ma-
11 terials, equipment, and property purchased with
12 such funds, shall be in a public agency, and a public
13 agency shall administer such funds, materials, equip-
14 ment, and property.

15 (f) REQUIRED ACTIVITIES.—A State educational
16 agency receiving a grant, or a local educational agency re-
17 ceiving a subgrant, under this section shall use such grant
18 or subgrant funds to carry out the following:

19 (1) Developing and implementing high-quality
20 professional development and training programs,
21 such as training programs developed with the assist-
22 ance of the Secretary (acting through the Office of
23 Special Education Programs Technical Assistance
24 Center on Positive Behavioral Interventions and
25 Supports of the Department of Education), to imple-

1 ment evidence-based systematic approaches to
2 school-wide positive behavior supports, including im-
3 proving coaching, facilitation, and training capacity
4 for principals and other administrators, teachers,
5 specialized instructional support personnel, and
6 other staff.

7 (2) Providing technical assistance to develop
8 and implement evidence-based systematic approaches
9 to school-wide positive behavior supports, including
10 technical assistance for data-driven decisionmaking
11 related to behavioral supports and interventions in
12 the classroom and throughout common areas.

13 (3) Researching, evaluating, and disseminating
14 high-quality evidence-based programs and activities
15 that implement school-wide positive behavior sup-
16 ports with fidelity.

17 (4) Supporting other local positive behavior
18 support implementation activities consistent with
19 this subsection, including outreach to families and
20 community agencies and providers, such as mental
21 health authorities.

22 (g) EVALUATION AND REPORT.—Each State edu-
23 cational agency receiving a grant under this section shall,
24 at the end of the 3-year grant period for such grant, pre-
25 pare and submit to the Secretary, a report that—

1 (1) evaluates the State’s progress toward devel-
2 oping and implementing evidence-based systematic
3 approaches to school-wide positive behavior supports;
4 and

5 (2) includes such information as the Secretary
6 may require.

7 (h) DEPARTMENT OF THE INTERIOR.—From the
8 amount appropriated under section 11, the Secretary may
9 allocate funds to the Secretary of the Interior for activities
10 under this section with respect to schools operated or
11 funded by the Department of the Interior, under such
12 terms as the Secretary of Education may prescribe.

13 **SEC. 7. NATIONAL ASSESSMENT.**

14 (a) NATIONAL ASSESSMENT.—The Secretary shall
15 carry out a national assessment to—

16 (1) determine compliance with the requirements
17 of this Act; and

18 (2) identify best practices with respect to pro-
19 fessional development and training programs carried
20 out under section 6, which shall include identifying
21 evidence-based school personnel training models with
22 demonstrated success (including models that empha-
23 size positive behavior supports and de-escalation
24 techniques over physical intervention).

1 (b) REPORT.—The Secretary shall submit to the
2 Committee on Education and Labor of the House of Rep-
3 resentatives and the Committee on Health, Education,
4 Labor, and Pensions of the Senate—

5 (1) an interim report that summarizes the pre-
6 liminary findings of the assessment described in sub-
7 section (a) not later than 3 years after the date of
8 enactment of this Act; and

9 (2) a final report of the findings of the assess-
10 ment not later than 5 years after the date of the en-
11 actment of this Act.

12 **SEC. 8. PROTECTION AND ADVOCACY SYSTEMS.**

13 Protection and Advocacy Systems shall have the au-
14 thority provided under section 143 of the Developmental
15 Disabilities Assistance and Bill of Rights Act of 2000 (42
16 U.S.C. 15043) to investigate, monitor, and enforce protec-
17 tions provided for students under this Act.

18 **SEC. 9. LIMITATION OF AUTHORITY.**

19 (a) IN GENERAL.—Nothing in this Act shall be con-
20 strued to restrict or limit, or allow the Secretary to restrict
21 or limit, any other rights or remedies otherwise available
22 to students or parents under Federal, State, or local law
23 or regulation.

24 (b) APPLICABILITY.—

1 (1) PRIVATE SCHOOLS.—Nothing in this Act
2 shall be construed to affect any private school that
3 does not receive, or does not serve students who re-
4 ceive, support in any form from any program sup-
5 ported, in whole or in part, with funds appropriated
6 to the Department of Education.

7 (2) HOME SCHOOLS.—Nothing in this Act shall
8 be construed to—

9 (A) affect a home school, whether or not a
10 home school is treated as a private school or
11 home school under State law; or

12 (B) consider parents who are schooling a
13 child at home as school personnel.

14 **SEC. 10. RULE OF CONSTRUCTION ON DATA COLLECTION.**

15 Nothing in this Act shall be construed to affect the
16 collection of information or data with respect to corporal
17 punishment authorized under the statutes and regulations
18 implementing title VI of the Civil Rights Act of 1964 (42
19 U.S.C. 2000c), title IX of the Education Amendments of
20 1972 (20 U.S.C. 1681 et seq.), section 504 of the Reha-
21 bilitation Act of 1973 (29 U.S.C. 794 et seq.), and the
22 Department of Education Organization Act (20 U.S.C.
23 3401 et seq.).

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this Act for fiscal year
4 2011 and each of the 4 succeeding fiscal years.

5 **SEC. 12. DEFINITIONS.**

6 In this Act:

7 (1) CORPORAL PUNISHMENT.—The term “cor-
8 poral punishment” means paddling, spanking, or
9 other forms of physical punishment, however light,
10 imposed upon a student.

11 (2) EDUCATIONAL SERVICE AGENCY.—The
12 term “educational service agency” has the meaning
13 given such term in section 9101(17) of the Elemen-
14 tary and Secondary Education Act of 1965 (20
15 U.S.C. 7801(17)).

16 (3) ELEMENTARY SCHOOL.—The term “elemen-
17 tary school” has the meaning given the term in sec-
18 tion 9101(18) of the Elementary and Secondary
19 Education Act of 1965 (20 U.S.C. 7801(18)).

20 (4) LOCAL EDUCATIONAL AGENCY.—The term
21 “local educational agency” has the meaning given
22 the term in section 9101(26) of the Elementary and
23 Secondary Education Act of 1965 (20 U.S.C.
24 7801(26)).

25 (5) PARENT.—The term “parent” has the
26 meaning given the term in section 9101(31) of the

1 Elementary and Secondary Education Act of 1965
2 (20 U.S.C. 7801(31)).

3 (6) POSITIVE BEHAVIOR SUPPORTS.—The term
4 “positive behavior supports” means a systematic ap-
5 proach to embed evidence-based practices and data-
6 driven decisionmaking to improve school climate and
7 culture, including a range of systemic and individ-
8 ualized strategies to reinforce desired behaviors and
9 diminish reoccurrence of problem behaviors, in order
10 to achieve improved academic and social outcomes
11 and increase learning for all students, including
12 those with the most complex and intensive behav-
13 ioral needs.

14 (7) PROTECTION AND ADVOCACY SYSTEM.—The
15 term “protection and advocacy system” means a
16 protection and advocacy system established under
17 section 143 of the Developmental Disabilities Assist-
18 ance and Bill of Rights Act of 2000 (42 U.S.C.
19 15043).

20 (8) SCHOOL.—The term “school” means an en-
21 tity—

22 (A) that—

23 (i) is a public or private—

24 (I) day or residential elementary
25 school or secondary school; or

1 (II) early childhood, elementary
 2 school, or secondary school program
 3 that is under the jurisdiction of a
 4 school, local educational agency, edu-
 5 cational service agency, or other edu-
 6 cational institution or program; and

7 (ii) receives, or serves students who
 8 receive, support in any form from any pro-
 9 gram supported, in whole or in part, with
 10 funds appropriated to the Department of
 11 Education; or

12 (B) that is a school funded or operated by
 13 the Department of the Interior.

14 (9) SCHOOL PERSONNEL.—The term “school
 15 personnel” has the meaning—

16 (A) given the term in section 4151(10) of
 17 the Elementary and Secondary Education Act
 18 of 1965 (20 U.S.C. 7161(10)); and

19 (B) given the term “school resource offi-
 20 cer” in section 4151(11) of the Elementary and
 21 Secondary Education Act of 1965 (20 U.S.C.
 22 7161(11)).

23 (10) SPECIALIZED INSTRUCTIONAL SUPPORT
 24 PERSONNEL.—The term “specialized instructional
 25 support personnel” means school counselors, school

1 social workers, school nurses, school psychologists,
2 and other qualified professional personnel involved in
3 providing assessment, diagnosis, counseling, edu-
4 cational, health, therapeutic, and other necessary
5 corrective or supportive services.

6 (11) SECONDARY SCHOOL.—The term “sec-
7 ondary school” has the meaning given the term in
8 section 9101(38) of the Elementary and Secondary
9 Education Act of 1965 (20 U.S.C. 7801(38)).

10 (12) SECRETARY.—The term “Secretary”
11 means the Secretary of Education.

12 (13) STATE.—The term “State” has the mean-
13 ing given the term in section 9101 of the Elemen-
14 tary and Secondary Education Act of 1965 (20
15 U.S.C. 7801).

16 (14) STATE EDUCATIONAL AGENCY.—The term
17 “State educational agency” has the meaning given
18 the term in section 9101(41) of the Elementary and
19 Secondary Education Act of 1965 (20 U.S.C.
20 7801(41)).

21 (15) STUDENT.—The term “student” means a
22 student enrolled in a school defined in paragraph
23 (8).

1 **SEC. 13. PRESUMPTION OF CONGRESS RELATING TO COM-**
2 **PETITIVE PROCEDURES.**

3 (a) PRESUMPTION.—It is the presumption of Con-
4 gress that grants awarded under this Act will be awarded
5 using competitive procedures based on merit.

6 (b) REPORT TO CONGRESS.—If grants are awarded
7 under this Act using procedures other than competitive
8 procedures, the Secretary shall submit to Congress a re-
9 port explaining why competitive procedures were not used.

10 **SEC. 14. PROHIBITION ON EARMARKS.**

11 None of the funds appropriated to carry out this Act
12 may be used for a congressional earmark as defined in
13 clause 9e, of rule XXI of the rules of the House of Rep-
14 resentatives of the 111th Congress.

